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Illinois Bar Journal (May, 1944), Vol. 32, No. 9, pp. 347 et seq. 26

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944.

VICTOR J. HERB,
Petitioner,
v.
NORMAN B. PITCAIRN and FRANK C. NICODEMUS, JR., Receivers for Wabash Railway Company, a Corporation,
Respondents.
No. 24.

BENJAMIN F. BELCHER,
Petitioner,
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Corporation,
Respondent.
No. 25.

On Certiorari to the Supreme Court of the State of Illinois.

BRIEF OF PETITIONERS.

The above styled cases are here on writs of certiorari awarded by this Court on March 27, 1944 (R. 45, in Case No. 24; R. 42, in Case No. 25), to review the final judgments, opinions and decisions of the Supreme Court of Illinois entered and rendered in said causes on September 24, 1943. The two cases involve parallel sets of facts and identical questions of law, and, since the orders granting

certiorari consolidated the two cases for argument, they are briefed together here under a single cover, but with separate statements of fact containing appropriate page references to the separate respective printed records in this Court.

Opinions of the Courts Below.

There were no opinions rendered by the trial courts in these cases.

In Case No. 24, the opinion of the Supreme Court of Illinois is reported as *Herb v. Pitcairn et al.*, 384 Ill. 237, 51 N. E. 2d 277, and appears at pages 25-33 of the printed transcript of record in that case in this Court.

In Case No. 25, the opinion of the Supreme Court of Illinois (which is based entirely upon the opinion of that Court in Case No. 24) is reported as *Belcher v. Louisville & Nashville R. Company*, 384 Ill. 281, 51 N. E. 2d 282, and appears at pages 27-29 of the printed transcript of record in that case in this Court.

Jurisdiction of This Court.

Jurisdiction of this Court is based upon the Judicial Code, Section 237, as amended by the Act of February 13, 1925, 43 Stat. 937, U. S. Code, Title 28, Section 344, paragraph (b), permitting petitions for certiorari to be prayed for and issued to the highest courts of the various states where a title, right, privilege or immunity is specially set up or claimed under a statute of the United States.

The actions here sought to be reviewed having been based upon the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, 35 Stat. 65, as amended by Act of Apr. 5, 1910, c. 143, 36 Stat. 291; U. S. C. [1934 Ed.], Title 45, §§ 51-59), and the Federal Safety Appliance Act (Act of Mar. 2, 1893, c. 196, 29 Stat. 531, as amended by Act of Mar. 2, 1903, c. 976, 32 Stat. 943, and Act of Apr. 14,

1910, c. 160, 36 Stat. 298; U. S. C. [1934 Ed.], Title 45, §§ 1-16), the jurisdiction of this Court attaches because the Supreme Court of Illinois, the highest court of that State, in affirming the judgments of the trial courts, has decided a Federal question of substance in a way probably not in accord with the applicable and controlling principles and decisions of this Court. Some authorities sustaining the jurisdiction are:

Seaboard Air Line R. Co. v. Horton, 233 U. S. 492, 34 S. Ct. 635, 58 L. Ed. 1062;
Minneapolis, St. P. & S. S. M. R. Co. v. Goneau, 269 U. S. 406, 46 S. Ct. 129, 70 L. Ed. 335;
Gulf M. & N. R. Co. v. Wells, 275 U. S. 455, 48 S. Ct. 151, 72 L. Ed. 370;
Atlantic Coast Line R. Co. v. Davis, 279 U. S. 34, 49 S. Ct. 210, 73 L. Ed. 601.

Statement in Case No. 24.

On December 22, 1937, petitioner Herb, as plaintiff, filed in the City Court of Granite City, Illinois, his complaint against the respondents Pitcairn et al., as defendants (R. 5-9), stating a cause of action against said respondents under the Federal Employers' Liability Act (U. S. C. [1934 Ed.], Title 45, §§ 51-59) for injuries sustained by him in or near the City of Decatur, Illinois, on the 23rd day of November, 1936 (R. 6), by reason of an alleged violation by respondents of the provisions of the Federal Safety Appliance Act (U. S. C. [1934 Ed.], Title 45, §§ 1-16), relating to hand brakes. Summons was duly issued and served upon the respondents (R. 9).

Thereafter, on February 28, 1938, the said respondents filed in said City Court of Granite City, Illinois, their answer (R. 9-13) by way of denial of various of the allegations of the complaint, coupled with a plea of assumption of risk.

Thereafter, on March 5, 1938, petitioner Herb duly filed

in said City Court of Granite City, Illinois, his reply to said answer (R. 13).

Thereafter, on October 13, 14 and 15, 1938, the case was duly tried to a jury in the said City Court of Granite City, Illinois (R. 2-3), resulting in a verdict in favor of petitioner Herb, as plaintiff, and against said respondents, as defendants, in the sum of $30,000.00 (R. 3, 13), but thereafter this verdict was set aside and a judgment entered for respondents (defendants) non obstante veredicto (R. 3). Petitioner Herb duly appealed from the judgment non obstante veredicto (R. 3-4, 13; cf. *Herb v. Pitcairn,* 306 Ill. App. 583, 29 N. E. 2d 543, and *Herb v. Pitcairn,* 377 Ill. 405, 36 N. E. 2d 555). As a result of that appeal, the judgment entered non obstante veredicto was reversed, and the cause was remanded to the City Court of Granite City, Illinois, for further proceedings (R. 14-15).

Thereafter, and after the action had been re-docketed in the City Court of Granite City, Illinois (R. 4, 15-17), the Supreme Court of Illinois, on March 16, 1942, decided the cases of *Werner v. Illinois Central R. Co.,* 379 Ill. 559, 42 N. E. 2d 82, and *Mitchell v. Louisville & Nashville R. Co.,* 379 Ill. 522, 42 N. E. 2d 86, ruling, in substance and effect, that each of the various City Courts in Illinois was without jurisdiction to hear and determine the subject matter of any action involving a cause of action which arose outside the territorial limits of the City in which the particular City Court was located. It thus appearing that petitioner's action had been commenced in the wrong court—that is, in a court which, under the decisions in *Werner v. Illinois Central R. Co., supra,* and *Mitchell v. Louisville & Nashville R. Co., supra,* was without jurisdiction to hear and determine the subject matter of the action because the cause of action had arisen outside the territorial limits of Granite City, Illinois—petitioner filed in his cause in the City Court of Granite City, Illinois, a motion for a change of venue of the action to the Circuit

Court of Madison County, Illinois (R. 17-18), under the provisions of Chapter 146, Section 36, Illinois Revised Statutes 1941, providing for a change of venue to the "proper court" where an action had been commenced in the "wrong court."[1] Petitioner's motion for a change of venue was, on July 17, 1942, sustained by the said City Court of Granite City, Illinois, and the venue of said action was duly ordered changed to the Circuit Court of Madison County, Illinois (R. 5). On July 31, 1942, the pleadings, papers, documents and exhibits, and a duly certified transcript of all the orders, in said cause in the said City Court of Granite City, Illinois, were duly filed in the said Circuit Court of Madison County, Illinois, on change of venue (R. 1-5).

Thereafter, on August 21, 1942, the respondents (defendants) filed in the Circuit Court of Madison County, Illinois, their motion to dismiss petitioner's (plaintiff's) cause (R. 18-21). That motion to dismiss was based, substantially, upon the grounds that, because the said City Court of Granite City, Illinois, was without jurisdiction to hear and determine the subject matter (merits) of plaintiff's action, (a) all orders entered, and all proceedings had, in said City Court of Granite City, Illinois, including the order changing the venue in said action to the said Circuit Court of Madison County, were null, void and of no effect, (b) if the statute under which the change of venue was granted (Chapter 146, Section 36, Illinois Revised Statutes 1941) authorizes a City Court to change the venue of an action, of which it is without jurisdiction to hear and determine the merits, to a court properly having jurisdiction to hear and determine the action, then such statute is contrary to Section 1, Article VI of the Constitution of Illinois, and is null and void, and (c) such stat-

[1] This statute is set out verbatim at page 21 of this brief. It is sometimes referred to in the Illinois decisions, and in this brief, as the "Illinois Venue Act."

ute, if it authorizes a change of venue under such circumstances, is in conflict with Section 6 of the Federal Employers' Liability Act (U. S. C. [1934 Ed.], Title 45, § 56), and is null and void.

This motion of respondents (defendants), to dismiss, was by the said Circuit Court of Madison County, Illinois, sustained on November 27, 1942, and judgment of dismissal was then entered accordingly (R. 24). From that order and judgment, petitioner (plaintiff) duly appealed to the Supreme Court of the State of Illinois (R. 23), where the judgment of the Circuit Court of Madison County, Illinois, was, on September 24, 1943, affirmed (R. 24-34).

Petitioner Herb, in due time, filed in the said Supreme Court of Illinois his petition for a rehearing (R. 34-41), which was entertained, but on the 12th day of November, 1943, the said Supreme Court of Illinois denied said petition for a rehearing (R. 42). The said Supreme Court of Illinois having denied petitioner's petition for rehearing on said date, the judgment of said Court thereupon became final.

Statement in Case No. 25.

On June 22, 1940, petitioner Belcher, as plaintiff, filed in the City Court of East St. Louis, Illinois, his complaint against the respondent Louisville & Nashville R. Co., as defendant (R. 1), stating a cause of action against said respondent under the Federal Employers' Liability Act (U. S. C. [1934 Ed.], Title 45, §§ 51-59), for injuries sustained by him in or near the City of Nashville, Tennessee, on the 15th day of February 1939 (R. 1-4), by reason of an alleged violation by respondent of the provisions of the Federal Safety Appliance Act (U. S. C. [1934 Ed.], Title 45, §§ 1-16), relating to hand brakes. Summons was duly issued and served upon the respondent (R. 4).

Thereafter, on September 9, 1940, the said respondent filed in said City Court of East St. Louis, Illinois, its amended answer (R. 5-11) by way of denial of various of the allegations of the complaint, coupled with a plea of release.

Thereafter, on September 23, 1940, petitioner Belcher duly filed in said City Court of East St. Louis, Illinois, his reply to said answer (R. 12-15).

Thereafter, on October 14, 15, and 16, 1940, the case was duly tried to a jury in the said City Court of East St. Louis, Illinois (R. 18-19), resulting in a verdict in favor of petitioner Belcher, as plaintiff, and against said respondent, as defendant, in the sum of $20,000.00 (R. 15, 19), but thereafter, on September 18, 1941, this verdict was set aside and a new trial granted (R. 15-16, 19-20).

Thereafter, on March 16, 1942, the Supreme Court of Illinois decided the cases of *Werner v. Illinois Central R. Co.*, 379 Ill. 559, 42 N. E. 2d 82, and *Mitchell v. Louisville & Nashville R. Co.*, 379 Ill. 522, 42 N. E. 2d 86, ruling, in substance and effect, that each of the various City Courts in Illinois was without jurisdiction to hear and determine the subject matter of any action involving a cause of action which arose outside the territorial limits of the City in which the particular City Court was located. It thus appearing that petitioner's action had been commenced in the wrong court—that is, in a court which, under the decisions in *Werner v. Illinois Central R. Co., supra*, and *Mitchell v. Louisville & Nashville R. Co., supra*, was without jurisdiction to hear and determine the subject matter of the action because the cause of action had arisen outside the territorial limits of East St. Louis, Illinois—petitioner filed in his cause in the City Court of East St. Louis, Illinois, a motion for a change of venue of the action to the Circuit Court of St. Clair County, Illinois (R. 17), under the provisions of Chapter 146, Section 36, Illinois Revised Statutes 1941, providing for a change of venue to

the "proper court" where an action had been commenced in the "wrong court."[2] Petitioner's motion for a change of venue was, on July 17, 1942, sustained by the said City Court of East St. Louis, Illinois, and the venue of said action was duly ordered changed to the Circuit Court of St. Clair County, Illinois (R. 20-21). On August 10, 1942, the pleadings, papers, documents and exhibits, and a duly certified transcript of all the orders, in said cause in the said City Court of East St. Louis, Illinois, were duly filed in the said Circuit Court of St. Clair County, Illinois, on change of venue (R. 1, 21).

Thereafter, on August 15, 1942, the respondent (defendant) filed in the Circuit Court of St. Clair County, Illinois, its motion to dismiss petitioner's (plaintiff's) cause (R. 21-23). That motion to dismiss was based, substantially, upon the grounds that, because the said City Court of East St. Louis, Illinois, was without jurisdiction to hear and determine the subject matter (merits) of plaintiff's action, (a) all orders entered, and all proceedings had, in said City Court of East St. Louis, Illinois, including the order changing the venue in said action to the said Circuit Court of St. Clair County, were null, void and of no effect, (b) if the statute under which the change of venue was granted (Chapter 146, § 36, Illinois Revised Statutes 1941) authorizes a City Court to change the venue of an action, of which it is without jurisdiction to hear and determine the merits, to a court properly having jurisdiction to hear and determine the action, then such statute is contrary to Section 1, Article VI of the Constitution of Illinois, and is null and void, and (c) such statute, if it authorizes a change of venue under such circumstances, is in conflict with Section 6 of the Federal Employers' Liability Act (U. S. C. [1934 Ed.], Title 45, § 56), and is null and void.

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2 This statute is set out verbatim at page 21 of this brief.

This motion of respondent (defendant), to dismiss, was by the said Circuit Court of St. Clair County, Illinois, sustained on November 27, 1942, and judgment of dismissal was then entered accordingly (R. 23). From that order and judgment, petitioner (plaintiff) duly appealed to the Supreme Court of the State of Illinois (R. 24-25), where the judgment of the Circuit Court of St. Clair County, Illinois, was, on September 24, 1943, affirmed (R. 26-30).

Petitioner Belcher, in due time, filed in the said Supreme Court of Illinois his petition for a rehearing (R. 30-38), which was entertained, but on the 12th day of November, 1943, the said Supreme Court of Illinois denied said petition for a rehearing (R. 39). The said Supreme Court of Illinois having denied petitioner's petition for rehearing on said date, the judgment of said Court thereupon became final.

Basis for the Decisions Below.

The opinion of the Supreme Court of Illinois in petitioner Herb's case,[3] which was controlling and decisive in petitioner Belcher's case,[4] leaves some doubt as to the true basis for that Court's decision that petitioners could not maintain their respective actions in the Illinois Circuits Courts after change of venue under the Illinois Venue Act (Illinois Revised Statutes 1941, Chap. 146, § 36) from the Illinois City Courts.

At one point, it appears that the opinion may be based upon the broad postulate that, if a court has no jurisdiction to hear and determine an action or proceeding initiated therein, there can be no jurisdiction giving effect to any matters preliminary to judgment, including the steps

3 384 Ill. 237, 51 N. E. 2d 277, R. 35-43 in Case. No. 24.

4 384 Ill. 281, 51 N. E. 2d 282, R. 27-29 in Case No. 25.

necessary to a "commencement" of the action. In this connection, the Illinois Court's opinion first said:[5]

> "The question involved relates to the effect of the proceedings had in a court wholly incompetent to render a valid judgment, because *if the judgment to be rendered would be void it necessarily follows the preliminary proceedings of the court, necessary to rendition of judgment, must likewise be void. If the court has no jurisdiction of the subject matter for judgment there can be no jurisdiction giving effect to process or pleadings.*" (Emphasis supplied.)

and then goes on to say:[6]

> "It is clear a suit was not commenced by filing the present suit in the city court of Granite City, or by issuing summons or filing a complaint. Lacking requisite jurisdiction because of the provisions of the constitution limiting it to cases arising within the limits of the city, such court was wholly incompetent to render any judgment *or to authorize any proceedings which would result in a judgment.*" (Emphasis supplied.)

However, the opinion clearly recognizes, and reaffirms, the decisions in two earlier cases in that Court[7] in which suits had been initiated in courts of record having no jurisdiction to hear and determine them, but in which it was held that the Illinois Venue Act (Illinois Revised Statutes 1941, Chap. 146, § 36) had given such courts a limited jurisdiction to change the venue to the proper courts, and in which were upheld the beginnings ("commencement") of the suits in courts lacking power to finish what had been begun, and the power in such courts, under the Illinois Venue

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5 384 Ill., l. c. 241, 51 N. E. 2d, l. c. 279, R. 27 in Case No. 24.

6 384 Ill., l. c. 247, 51 N. E. 2d, l. c. 282, R. 32 in Case No. 24.

7 Central Illinois Public Service Co. v. Industrial Commission, 393 Ill. 62, 127 N. E. 80; Gill v. Lynch, 367 Ill. 303, 10 N. E. 2d 812—both hereinafter discussed at length.

Act, to give continuity to the suits by sending them to courts having power to hear and determine them.

Another part of the opinion indicates that the Court's decision may be based upon the proposition that the commencement of the petitioners' (plaintiffs') actions was dependent upon jurisdiction over the persons of the respondents (defendants), for it is said:[8]

> "This would give the order of transfer by the city court the effect of vitalizing process that was void and considering a case commenced and pending in a proper court *during a period when, in legal contemplation, no judicial control of defendants had yet been exercised.*
>
> "Conceding, but not deciding, that in proper cases a court without jurisdiction of the subject matter could by statute be authorized to transfer its proceedings to a court having jurisdiction, still the condition that the action be commenced within two years is not met."

However, the real basis for the decisions below appears to be that the terms of Section 6 of the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, § 6, 35 Stat. 66, as amended by Act of Apr. 5, 1910, c. 143, § 1, 36 Stat. 291; 45 U. S. C. A. [1934 Ed.], § 56) required not only that employees' actions under the Act be brought "within two years from the day the cause of action accrued," but, also, that they be brought within such time in a court having jurisdiction to hear and determine them. The opinion of the Supreme Court of Illinois in this connection first said:[9]

> "The material point for consideration is whether the plaintiff has commenced an action within two years of the date of his injury *in a court having juris-*

8 384 Ill., l. c. 244, 51 N. E. 2d, l. c. 281, R. 36 in Case No. 24.

9 384 Ill., l. c. 240-241, 51 N. E. 2d, l. c. 279, R. 27 in Case No. 24.

> *diction to hear and determine the same, as required by section 6 of the Federal Employers' Liability Act,* by transferring the cause from a court having no jurisdiction over it at a date which, if then originally filed in the latter court, could not be maintained because not filed within the statutory time." (Emphasis supplied),

and then went on to say:[10]

> "* * * we observe recovery under the Federal Employers' Liability Act is conditioned upon two things: (1) commencing an action within two years from the date of the injury; and (2) *commencing such action in a court having jurisdiction to hear and determine the same.* * * * The plaintiff having predicated his case upon the Federal Employers' Liability Act must comply with its provisions, both with respect to the time of commencing the suit *and of bringing it in a court having jurisdiction to hear and determine it.*" (Emphasis supplied.)

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10 384 Ill., l. c. 242, 51 N. E. 2d, l. c. 280, R. 28-29 in Case No. 24.

Specification of Errors.

The Supreme Court of Illinois, in holding that petitioners could not maintain their respective actions in the Circuit Courts of that State, after changes of venue in such actions from the City Courts, erred in the following particulars:

(1) Error in failing and refusing to hold that the City Courts in which petitioners' respective actions were instituted, possessed, under the Illinois Venue Act, limited jurisdiction to change the venue of such actions to the Circuit Courts and thereby give continuity to the actions.

(2) Error in failing and refusing to hold that petitioners' respective actions were "commenced" within two years from the dates petitioners' respective causes of action accrued.

(3) Error in holding that recovery under the Federal Employers' Liability Act is conditioned not only upon the employee commencing his action within the two-year period limited by that Act, but also upon his commencing his action within such time in a court having jurisdiction to hear and determine it—that is, that it is not enough for the action to be commenced within the time limited in a court having a limited jurisdiction over the action, but that it must be commenced in a court having full and complete jurisdiction.

(4) Error in failing and refusing to hold that, where an action under the Federal Employers' Liability Act is instituted, within two years from the day the cause of action accrued, in a State Court which was without jurisdiction to hear and determine the merits of the action but which had a limited jurisdiction to change the venue of such action to a court having complete jurisdiction thereover, the action is "commenced within two years from the day

the cause of action accrued," as required by Section 6 of the Federal Employers' Liability Act, even though the change of venue to the latter court takes place more than two years after the day the cause of action accrued.

(5) Error in discriminating against the rights of petitioners because such rights arose under Federal laws.

Summary of Argument.

The judgments, opinions and decisions of the Supreme Court of Illinois, here under review, are erroneous for the following reasons:

I.

Under the law of Illinois, where (as here) a suit, action or proceeding is commenced in a court of record, but in the wrong court because that court lacks jurisdiction over the parties or the subject matter, or both, the court nevertheless has a limited jurisdiction to change the venue to a proper court, and any of the parties is entitled, upon motion, to such a change of venue, irrespective of whether such motion is made before or after trial; and the taking of such a change of venue does not constitute commencement of a new action in the court to which the venue is changed, but constitutes merely one step or proceeding in the prosecution of the action commenced in the court from which the venue is changed.

Illinois Revised Statutes 1941, Chap. 146, § 36;
Illinois Revised Statutes 1941, Chap. 146, §§ 15, 16;
Illinois Revised Statutes 1941, Chap. 37, § 346;
Central Illinois Public Service Co. v. Industrial Commission, 293 Ill. 62, 127 N. E. 80;
Gill v. Lynch, 367 Ill. 203, 10 N. E. 2d 812.

II.

Petitioners' actions were "commenced" within two years from the days their respective causes of action accrued.

A. The question of when a suit is commenced in a State Court is a matter which the Federal courts recognize as

being controlled generally by the practice in the particular State.

Goldenburg v. Murphy, 108 U. S. 162, 2 S. Ct. 388, 27 L. Ed. 686;
Chesapeake & O. R. Co. v. DeAtley, 241 U. S. 310, 36 S. Ct. 564, 60 L. Ed. 1016;
Minneapolis & St. L. R. Co. v. Bombolis, 241 U. S. 211, 36 S. Ct. 595, 60 L. Ed. 961;
Act of April 8, 1908, c. 149, § 6, 35 Stat. 66, as amended by Act of April 5, 1910, c. 143, § 1, 36 Stat. 291; U. S. C. [1934 Ed.], Title 45, § 56.

B. Petitioners' actions were commenced on the days their respective complaints were filed in the City Courts of Illinois.

Illinois Revised Statutes 1937, Chap. 110, § 129;
Milwaukee Mechanics Ins. Co. v. Schallman, 188 Ill. 213, 59 N. E. 12;
Randall Dairy Co. v. Pevely Dairy Co., 278 Ill. App. 350;
Cohens v. Virginia, 6 Wheat. [19 U. S.] 264, 5 L. Ed. 257;
Illinois Revised Statutes 1941, Chap. 110, § 129.

C. Jurisdiction of the City Courts over the persons of respondents (defendants) was not essential to the "commencement" of petitioners' actions, but, had it been essential, it was obtained when respondents (defendants) entered their appearances and answered in the City Courts.

Koberlein v. First National Bank of St. Elmo, 376 Ill. 450, 34 N. E. 2d 388;
Vincent v. McElvain, 304 Ill. 160, 136 N. E. 502;
Central Illinois Public Service Co. v. Industrial Commission, 293 Ill. 62, 127 N. E. 80;
Bates Manufacturing Co. v. United States, 303 U. S. 567, 58 S. Ct. 694, 82 L. Ed. 1020.

D. The changes of venue in petitioners' actions from the City Courts to the Circuit Courts, which took place more than two years after the causes of action accrued, do not affect the fact that such actions were commenced in the City Courts within the two-year period.

Authorities cited, supra.

III.

In ruling that recovery under the Federal Employers' Liability Act was conditioned not only upon the commencing of an action within two years from the day the cause of action accrued, but also upon commencing such action in a court having jurisdiction to hear and determine the same, the opinions and decisions of the Supreme Court of Illinois here under review have erroneously construed the requirements of Section 6 of that Act, and have erroneously ruled that a State Court is not required to exercise its jurisdiction over an action under the Act, contrary to principles enounced by this Court.

A. The Act does not expressly or impliedly make any such requirement as to the character of the power of the court in which the action is brought.

Act of April 8, 1908, c. 149, § 6, 35 Stat. 66, as amended by Act of April 5, 1910, c. 143, § 1, 36 Stat. 291; U. S. C. [1934 Ed.], Title 45, § 56.

B. The Act, being a remedial one, is to be liberally construed so as to advance the remedy proposed and correct the evils against which it was directed.

Jamison v. Encarnacion, 281 U. S. 635, 50 S. Ct. 440, 74 L. Ed. 1082.

C. A State Court having jurisdiction over an action

under the Act not only can, but must, exercise such jurisdiction.

Second Employers' Liability Cases [Mondou v. New York, N. H. & H. R. Co.], 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327;
McKnett v. St. Louis & S. F. R. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. Ed. 1227;
Miles v. Illinois Central R. Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129.

IV.

The effect of the opinions and decisions here under review is to discriminate between rights arising under Federal law and those arising under State law. A State may not discriminate against rights arising under Federal laws.

McKnett v. St. Louis & S. F. R. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. Ed. 1227.

ARGUMENT.

Although several incidental questions are raised in this Court on this record, there is only one basic question, namely: Whether an action under the Federal Employers' Liability Act, instituted within two years from the day the cause of action accrued, in a State Court which was without jurisdiction to hear and determine the merits of the action but which had a limited jurisdiction to change the venue of such action to a court having complete jurisdiction thereof, and the venue of which action was changed to such latter court more than two years after the cause of action accrued, is "commenced" within the requirements of Section 6 of the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, § 6, 35 Stat. 66, as amended by Act of Apr. 5, 1910, c. 143, § 1, 36 Stat. 291; 45 U. S. C. A. [1934 Ed.], § 56).

I.

Some prefatory discussion of several phases of Illinois law is necessary to a comprehensive understanding of the particular questions here involved.

The Circuit Courts in Illinois are courts of general original jurisdiction in civil cases (Constitution of Illinois of 1870, Art. VI, § 12).

The City Courts in that State are courts of record (Illinois Revised Statutes 1941, Chap. 37, § 333; East St. Louis Connecting Ry. Co. v. Enright, 47 Ill. App. 494). That such City Courts were courts of general jurisdiction in civil cases, having concurrent jurisdiction with the Circuit Courts within the City in such cases, for many years had been assumed (*Helmuth v. Bell* [1894], 150 Ill. 263, 37 N. E. 230; *Herb v. Pitcairn* [1941], 377 Ill. 405, 36 N. E. 2d 555), and on occasions expressly declared (*Baker v. Rockabrand*, 118 Ill. 365, 371, 8 N. E. 456; *Miller v. People*, 183 Ill. 423, 426, 56 N. E. 60; *Smith v. Herdlicka*, 323

Ill. 585, 590, 154 N. E. 414; *Knickerbocker Ice Co. v. Leyda*, 128 Ill. App. 66, 69; *Konow v. Nichols*, 128 Ill. App. 409, 413; *Torpedo Top Co. v. Royal Ins. Co.*, 162 Ill. App. 338, 340-341; *Swanson v. Moline R. I. & E. Trac. Co.*, 204 Ill. App. 144, 145-146; *Buchanan v. Scottish Union & Nat'l Ins. Co.*, 210 Ill. App. 523, 525). However, on March 16, 1942, in the cases of *Werner v. Illinois Central R. Co.*, 379 Ill. 559, 42 N. E. 2d 82, and *Mitchell v. Louisville & Nashville R. Co.*, 379 Ill. 522, 42 N. E. 2d 86, the Supreme Court of Illinois ruled, in substance and effect, that each of the City Courts in that State was without jurisdiction to hear and determine the subject matter of any action involving a cause of action arising outside the territorial limits of the City in which such court was located.

The Illinois statutes relating to the mechanics of a change of venue from one court to another are typical of such statutes generally. Illinois Revised Statutes 1941, Chap. 146, § 15, in so far as here relevant, provides:

> "In all cases of change of venue, the clerk of the court from which the change is granted shall immediately make out a full transcript of record and proceedings in the case, and of the petition, affidavits and order for the change of venue, and transmit the same, together with all the papers filed in the case, to the proper court: * * *. Such transcript and papers or copies may be transmitted by mail, or in such other way as the court or judge may direct,"

while § 16 of that same chapter of the Illinois statutes further provides:

> "The clerk of the court to which the change of venue is granted shall file the transcript and papers transmitted to him and docket the cause, *and such cause shall be proceeded in and determined in all things, as well before as after judgment, as if it had originated in such court.*" (Emphasis supplied.)

With respect to changes of venue from the City Courts, Illinois Revised Statutes 1941, Chap. 37, § 346, in so far as here relevant, provides:

> "Change of venue from city courts, *for the same causes and in the same manner*, may be taken as from circuits courts, and the cases sent to any other city court, or to any circuit court, or to any other court of competent jurisdiction where the cause complained of does not exist." (Emphasis supplied.)

A remarkable statute upon change of venue is Illinois Revised Statutes 1941, Chap. 146, § 36 (sometimes referred to as the "Illinois Venue Act" or the "Venue Act of 1891"),[11] which provides:

> "That wherever any suit or proceeding shall hereafter be commenced, in any court of record in this State, and it shall appear to the court where the same is pending, that the same has been commenced in the wrong court or county, then upon motion of either or any of the parties to suit or proceeding, the court shall change the venue of such suit or proceeding to the proper court or county, and the same when the venue shall be so changed, shall be then pending and triable in such court or county to which the same shall be so changed the same as in other cases of change of venue: Provided, that where either party to such suit or proceeding shall procure the change of venue

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11 This statute, while remarkable, is not unique. Similar statutes or constitutional provisions for transfer of causes between appellate courts are found in Illinois (Illinois Revised Statutes 1941, Chap. 110, § 210), Georgia (Constitution of Georgia, Art. VI, Sec. II, Par. V), Louisiana (General Statutes of Louisiana, 1939, § 1427), Missouri (Revised Statutes of Missouri, 1939, § 2079) and Tennessee (Mitchie's Tennessee Code of 1938, § 10618), while similar statutes for transfer of causes between nisi prius courts are found in California (California Code of Civil Procedure, 1941, § 396), Connecticut (General Statutes of Connecticut, Revision of 1930, Vol. II, Chap. 288, § 5485), Massachusetts (Annotated Laws of Massachusetts, Vol. 7, c. 223, § 15), New Hampshire (Public Laws of New Hampshire, 1926, Chap. 334, §§ 8-9), New Jersey (Revised Statutes of New Jersey, 1937, 2:26-60 et seq.), New York (New York Civil Practice Act, § 110), Texas (Vernon's Texas Statutes, 1936, Art. 8307a), and Wisconsin (Wisconsin Statutes, 1931, § 269.52). A table of cases in which these latter statutes are construed is attached as an Appendix to this brief.

as herein provided for, that the court shall require the plaintiff in said suit to pay all costs in such suit or proceeding, up to and including the costs of the change of venue except such costs, if any there are, as shall have been made or occasioned by answer to the merits and a trial thereon, if any such shall have been had or made, and such costs, if any, caused by answer to the merits and trial thereon shall abide the final result of such suit or proceeding the same as in other cases of change of venue."

This last quoted statute was construed and applied by the Supreme Court of Illinois in *Central Illinois Public Service Co. v. Industrial Commission*, 293 Ill. 62, 127 N. E. 80. That case involved a certiorari proceeding to review an award of the Illinois Industrial Commission under a statute which required that such proceeding be "commenced" within twenty days after the decision of the Industrial Commission and in the Circuit Court of the County in which the defendant might be found. B. L. Kirk, the administrator of the deceased employee, was the defendant, and lived and could be found only in Champaign County. Despite this, the certiorari proceeding was commenced in the Circuit Court of Coles County, but within the statutory period. Kirk was served with notice by mail as provided by the statute, but entered only a special appearance to contest the jurisdiction of the Circuit Court of Coles County. Various proceedings in the case were had, and, some six months after the action had been commenced, a motion was filed by the plaintiff, under the Illinois Venue Act (now Illinois Revised Statutes 1941, Chap. 146, § 36), for a change of venue to the Circuit Court of Champaign County. This motion for change of venue was granted on the same day it was filed, and the mechanics of the change of venue were completed. Kirk then entered his special appearance in the Circuit Court of Champaign County and moved to quash the writ of

certiorari upon the grounds that the proceeding had not been commenced within the time limited by statute, that the Circuit Court of Coles County never acquired jurisdiction, and that the Circuit Court of Champaign County, therefore, never acquired jurisdiction upon the change of venue being made. The trial court sustained this motion and dismissed the writ of certiorari. On appeal from this ruling, the Supreme Court of Illinois said:

> "* * * the circuit court of Coles county did not have jurisdiction either of the person of the administrator or the subject matter of the suit" (127 N. E., l. c. 82),

but in reversing the ruling of the trial court, in holding that the case properly had been commenced and transferred to the Circuit Court of Champaign County on change of venue, and in remanding the case for a trial upon the merits in that court, the Supreme Court of Illinois said (127 N. E., l. c. 82):

> "* * * it is evident that by the use of the term 'commenced in the wrong court or county,' *the Legislature intended to reach those cases begun in courts not having jurisdiction of the subject matter as well as those where jurisdiction of the parties, alone, is lacking.* This is a provision of the law evidently enacted for the purpose of simplifying procedure and preventing the loss of substantial rights through a misunderstanding as to what forum should be used to obtain such rights. *By this act it is evident that the Legislature intended to and did confer on all courts of record in this state, without regard to any other jurisdiction either conferred upon or denied it by common law or statute, jurisdiction to 'change the venue of such suit or proceeding to the proper court or county.'* It cannot be doubted that the power to confer that limited jurisdiction lies within the powers of the Legislature, and we are of the opinion that in

> the instant case, while the circuit court of Coles county had no jurisdiction of the subject-matter involved for any other purpose than that defined in the Venue Act of 1891 and could therefore enter no order affecting the rights of the parties under the award made, that court was by said act empowered to transfer the cause to the proper county, which in this case was Champaign county, and under said act when said transfer was made the cause was from that time forward pending in the circuit court of Champaign county." (Emphasis supplied.)

In *Gill v. Lynch*, 367 Ill. 203, 10 N. E. 2d 812, an action for a receiver had been brought in an Illinois County Court under a statute commonly known as the "Skarda Act," and a receiver was appointed. Subsequently, the Supreme Court of Illinois held that the Skarda Act was unconstitutional, and that the County Courts had no jurisdiction over the appointment of receivers. Thereafter, the case was transferred on change of venue, under the Illinois Venue Act, to the Circuit Court of Cook County, and the Illinois Supreme Court, in affirming this transfer on change of venue, cited and confirmed the doctrine enounced in *Central Illinois Public Service Co. v. Industrial Commission, supra,* and said (10 N. E. 2d, l. c. 814):

> "These holdings conclusively demonstrate that the county court had no jurisdiction to hear a petition for appointment of a receiver or for any purpose *except to transfer the cause to the proper court.* The appointments, and all subsequent orders, except that transferring the cause, being void, *the cause therefore went to the circuit court with the petitions for appointment of a receiver still pending and undetermined.*" (Emphasis supplied.)

Thus, in that case, while it denied validity to those intermediary proceedings in the County Court only, between summons and transfer, which the County Court was with-

out jurisdiction to take, the Supreme Court of Illinois sustained the commencement of the suit in the County Court and the subsequent proceedings to transfer the case to the Circuit Court, and recognized the power of the County Court to give, by the limited jurisdiction vested in it under the Illinois Venue Act, continuity to the proceedings commenced therein.

From the foregoing statutes and authorities it appears that, under the law of Illinois:

(a) Irrespective of any other jurisdiction conferred upon or denied it, every court of record in Illinois—including the various City Courts—has a limited jurisdiction over every suit or proceeding, commenced or pending therein, empowering such court upon application of any party to change the venue of such suit or proceeding to the proper court or county.

(b) The institution of a suit or proceeding in a court of record within the time required by law, even though the suit or proceeding be instituted in a court which does not have jurisdiction over the parties defendant or the subject matter of the suit, or both, constitutes the "commencement" of the action within the time required by law, by reason of the limited jurisdiction of the court to transfer the cause to the proper court or county by a change of venue.

(c) The matter of effecting a change of venue of a suit under the Illinois Venue Act, from a court of record which is without full jurisdiction (i. e., the "wrong court") to a court which has full jurisdiction (i. e., the "proper court") does not constitute the "commencement" of the action in the latter court, but constitutes merely one of the proceedings in the prosecution of the action which was "commenced" in the former court.

The opinions of the Supreme Court of Illinois here under review do not in the slightest degree affect what has

just above been said. The opinion in petitioner Herb's case (which controlled the opinion and decision in petitioner Belcher's case as well) cites and reaffirms the decisions in *Central Illinois Public Service Co. v. Industrial Commission, supra,* and *Gill v. Lynch, supra,* but seeks to distinguish them by saying:[12]

> "The distinction to be drawn is that *if a case is improperly filed in a court having jurisdiction of the cause generally but without its territorial jurisdiction, it may be transferred to the proper circuit court.* But, if the cause is filed in a court which could never lawfully acquire jurisdiction, the transfer to a court which would have had jurisdiction gives no validity to the proceedings in the first court." (Emphasis supplied.)

Whatever this pronouncement may mean[13] it is clear that petitioners' cases come within the first sentence of it. Had the petitioners' causes of action arisen within the territorial limits of the respective cities in the City Courts in which petitioners instituted their actions, those courts would have had full and complete jurisdiction over those actions.[14] It was only the "territorial" feature of petitioners' actions which prevented the City Courts from having complete and general jurisdiction of those causes. Those causes were, therefore, "improperly filed in a court having jurisdiction of the cause generally but without its territorial jurisdiction," and were, therefore, causes which "may be transferred to the proper circuit court" under the above quoted language.

Thus, it is manifest that under the established law of Illinois, recognized and approved in the decisions and opinions here under review, the City Courts in which peti-

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12 384 Ill., l. c. 246, 51 N. E. 2d, l. c. 282, R. 32 in Case No. 24.

13 Compare discussion of petitioners' cases in Illinois Bar Journal (May, 1944), Vol. 32, No. 9, pp. 347 et seq.

14 Compare Popp v. Terminal R. Ass'n of St. Louis, 316 Ill. App. 670, 45 N. E. 2d 299.

tioners' respective actions were instituted possessed, under the Illinois Venue Act, limited jurisdiction to change the venue of such actions to the circuit courts, and thereby give continuity of those actions by transferring them to the courts having full and complete jurisdiction thereover.

II.

In view of the well-settled doctrines, that in actions brought in a State Court the Federal Courts will follow the practice of the State in determining when an action is commenced *(Goldenburg v. Murphy,* 108 U. S. 162, 2 S. Ct. 388, 27 L. Ed. 686), and that the practice and procedure in actions brought under the Federal Employers' Liability Act in a State Court will be governed by the law of the State in which such court is located *(Chesapeake & O. R. Co. v. DeAtley,* 241 U. S. 310, 317, 36 S. Ct. 564, 60 L. Ed. 1016; *Minneapolis & St. L. R. Co. v. Bombolis,* 241 U. S. 211, 36 S. Ct. 595, 60 L. Ed. 961), there can be little room for doubt about the applicability of the Illinois doctrines which we have just above discussed in determining whether the case at bar was "commenced" within the time required by Section 6 of the Federal Employers' Liability Act (Act of April 8, 1908, c. 149, § 6, 35 Stat. 66, as amended by the Act of April 5, 1910, c. 143, § 1, 36 Stat. 291; U. S. C. [1934 Ed.], Title 45, § 56), which, in so far as here relevant, provides:

> "No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued * * *. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, * * *."

Petitioner Herb's cause of action accrued at Decatur, Illinois, on the date of his injury, November 23, 1936. On De-

cember 22, 1937, as plaintiff, he filed in the City Court of Granite City, Illinois, his complaint alleging a cause of action under the Federal Employers' Liability Act, and had a summons issued out of that court for the respondents Pitcairn and Nicodemus, in their capacities as receivers, as defendants (R. 5-9 in Case No. 24). Petitioner Belcher's cause of action accrued at Nashville, Tennessee, on February 15, 1939, and on June 22, 1940, as plaintiff, he filed in the City Court of East St. Louis, Illinois, his complaint alleging a cause of action under the Federal Employers' Liability Act; and had a summons issued out of that court for the respondent Louisville & Nashville Railroad Company, as defendant (R. 1-4 in Case No. 25). Thus, petitioners' respective actions were "commenced" well within "two years from the day the cause of action accrued" whether such actions be said to be "commenced" when the process (summons) was issued, as was the rule at common law and under the Illinois Civil Practice Act prior to its amendment on July 6, 1937 (*Cohens v. Virginia,* 6 Wheat. [19 U. S.] 264, 408, 5 L. Ed. 257, 292; Illinois Revised Statutes 1937, Chap. 110, § 129; *Milwaukee Mechanics Ins. Co. v. Schallman,* 188 Ill. 213, 220, 59 N. E. 12; *Randall Dairy Co. v. Pevely Dairy Co.,* 278 Ill. App. 350, 351), or when the complaints were filed, as is the rule under the Illinois Civil Practice Act since its amendment in 1937 (Illinois Revised Statutes 1941, Chap. 110, § 129).

As previously indicated (ante, p. 11), it is suggested in the opinion of the Supreme Court of Illinois that although the City Courts might be deemed to have a limited jurisdiction to grant changes of venue to the proper courts under the Illinois Venue Act, those courts did not acquire jurisdiction over the persons of the respondents (defendants) by virtue of the summonses issued out of such courts. The fact is, however, that the City Courts acquired jurisdiction over the persons of respondents well within the two-year period provided for by Section 6 of the Federal

Employers' Liability Act, wholly irrespective of the validity of the summonses, when the respondents appeared generally and filed their answers in those courts within two years after petitioners' respective causes of action had accrued (R. 9-13 in Case No. 24; R. 5-11 in Case No. 25), under which circumstances the issuance and service of summons were not essential to the commencement of the actions (*Koberlein v. First National Bank of St. Elmo*, 376 Ill. 450, 34 N. E. 2d 388). Furthermore, the question of when petitioners' actions were "commenced" was and is not dependent upon the acquisition of jurisdiction of the persons of respondents, for, as was said in *Vincent v. McElvain*, 304 Ill. 160, 136 N. E. 502, 503:

> "It is well established by repeated decisions of this and other courts that a suit or action is commenced when a party puts in motion, under his claim, the instruments of the court. * * * *We know of no authority which holds that a suit is not commenced until the court gets jurisdiction of the defendant.*" (Emphasis supplied.)

To this same effect are the decisions in *Central Illinois Public Service Co. v. Industrial Commission, supra*, and *Bates Manufacturing Co. v. United States*, 303 U. S. 567, 58 S. Ct. 694, 82 L. Ed. 1020. In this connection, too, there should not be overlooked the amendment of July 6, 1937, to the Illinois Civil Practice Act (Laws of Illinois 1937, p. 989; Illinois Revised Statutes 1941, Chap. 110, § 129), providing, in so far as here relevant, that:

> "Every civil action, unless otherwise expressly provided by statute shall be commenced by the filing of a complaint."

After the pleadings had been made up in petitioners' cases in the City Courts, the petitioners prosecuted their actions with due diligence, and it was only due to the

decisions of the Illinois Supreme Court some years later in *Werner v. Illinois Central R. Co., supra,* and *Mitchell v. Louisville & Nashville R. Co., supra,* that the jurisdiction of the City Courts over petitioners' actions was determined to be limited, so as to require changes of venue to the Circuit Courts. Effecting those changes of venue did not, under applicable Illinois law, constitute a dismissal of petitioners' actions in the City Courts and the commencement of such actions in the Circuit Courts, but, on the contrary, constituted merely another step or proceeding in the prosecution of those actions. The City Courts were not wholly without jurisdiction of petitioners' actions, although the jurisdiction of such courts over those actions was a limited one—limited to the granting of a change of venue to courts having full jurisdiction. The fact that such changes of venue took place more than two years after the petitioners' causes of action accrued is immaterial in determining whether such actions were "commenced" within two years from the day the causes of action accrued, because the Illinois Venue Act imposes no time limit upon transfers of pending suits, but, on the contrary, by providing for transfers either before or after trial, clearly indicates an intention that such transfers can be made at any time without affecting the time of "commencement" of the suits.

Any concept that, under Illinois law, these petitioners' suits were "commenced" by and as of the dates of the changes of venue to the Circuit Courts, instead of by and as of the dates of the filing of petitioners' respective complaints in the City Courts, is dispelled by the unmistakable language of the Illinois Venue Act. In that Act, which is quoted at page 21 of this brief, reference is made twice to "commencement" of the action in the wrong court, and no reference is made therein to any commencement of the action in the proper court. Furthermore, it is said in that Act that, after the change of venue is made

from the wrong court to the proper court, the suits shall then be pending and triable in the proper court "the same as in other cases of change of venue." In no other case of change of venue, if suit is commenced in proper time in the first venue, does the transfer by change of venue in any way affect the time of the "commencement" of the suit.

Thus, it becomes clear that, in any view of the matter, petitioners' respective actions were, under the established law of Illinois, "commenced" within two years from the days upon which the petitioners' respective causes of action accrued.

III.

The Supreme Court of Illinois, notwithstanding the matters hereinbefore discussed, ruled that petitioners' actions were not commenced within two years after their causes of action accrued, as required by Section 6 of the Federal Employers' Liability Act, basing such ruling upon its interpretation of that Act as follows:

> "* * * we observe recovery under the Federal Employers' Liability Act is conditioned upon two things: (1) commencing an action within two years from the date of the injury; and (2) *commencing such action in a court having jurisdiction to hear and determine the same.* * * * The plaintiff having predicated his case upon the Federal Employers' Liability Act must comply with its provisions, both with respect to the time of commencing the suit *and of bringing it in a court having jurisdiction to hear and determine it.*" (Emphasis supplied.)

We submit that Section 6 of the Liability Act does not require that actions thereunder, in order to comply with the requirement relating to the time within which they must be commenced, must be commenced within that time in a court having jurisdiction to hear and determine the

merits of the action—that is to say, full and complete jurisdiction over the cause. There is no specific language in that section of the Act making, or even suggesting, any such requirement as to the character of the power of the Court in which the action is brought, and so far as we have been able to determine neither this Honorable Court nor any other Federal court has interpreted this section to contain such a requirement.

On the contrary, the implications from the decisions of this Court construing this Act clearly indicate that this section should not be so narrowly construed as the Supreme Court of Illinois has construed it. The Act is a remedial one, and, like all remedial legislation, should be liberally construed so as to advance the remedy proposed and correct the evils against which it was directed (*Jamison v. Encarnacion*, 281 U. S. 635, 640, 50 S. Ct. 440, 74 L. Ed. 1082). Section 6 of the Act does not vest in the State Courts concurrent jurisdiction with the Federal Courts over actions under the Act, but, conversely, vests in the Federal Courts "concurrent jurisdiction with that of the courts of the several States" over such actions. It is familiar doctrine that, in the absence of a constitutional or a statutory restriction of jurisdiction over an action or proceeding to the Federal Courts or tribunals, the courts of the several States have jurisdiction to enforce rights arising under the Constitution and laws of the United States (*Cohens v. Virginia*, 6 Wheat. [19 U. S.] 264, 396-397, 5 L. Ed. 257; *Claflin v. Houseman*, 93 U. S. 130, 136, 23 L. Ed. 833; *Robb v. Connolly*, 111 U. S. 624, 637, 4 S. Ct. 544, 28 L. Ed. 542; *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, 479, 56 S. Ct. 343, 80 L. Ed. 331), and in line with this doctrine it is held that, where an action under the Federal Employers' Liability Act is brought in a State Court which has jurisdiction over the action, that Court not only can, but must, exercise its jurisdiction (*Second Employers' Liability Cases* [Mondou

v. New York, N. H. & H. R. Co.], 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327; *McKnett v. St. Louis & S. F. R. Co.*, 292 U. S. 230, 54 S. Ct. 690, 78 L. Ed. 1227; *Miles v. Illinois Central R. Co.*, 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129).

It necessarily conflicts with and narrows these principles to construe Section 6 of the Federal Employers' Liability Act as the Supreme Court of Illinois did construe it, so as to require that an action brought in a State Court under the Act, in order to meet the requirements of that section as to the time within which the action can be commenced, not only must be brought within such time, but also must be brought in a court having jurisdiction to hear and determine the merits of the action. The effect of the decision of the Supreme Court of Illinois in this case is to rule that a State Court having a limited jurisdiction over an action under the Federal Employers' Liability Act is not under a duty to exercise that limited jurisdiction.

To uphold the construction placed upon Section 6 of the Federal Employers' Liability Act by the Supreme Court of Illinois necessarily would result in an anomalous doctrine that a State Court having a limited jurisdiction over an action to enforce a federal right would not be obliged to exercise that limited jurisdiction, while a State Court having full jurisdiction over the action would be compelled to exercise its jurisdiction thereover.

The Supreme Court of Illinois has, we submit, manifestly erred in construing Section 6 of the Federal Employers' Liability Act in such manner as to make it impose a requirement that employees' suits be commenced in a court having jurisdiction to hear and determine such suits. The only requirement of that Act is that such suits be commenced in a Federal or State Court within two years. Mention is made in the Act of a State Court of competent jurisdiction only in connection with removals from State to Federal Courts, and then only to deny the right of re-

moval. The construction placed upon Section 6 of the Act by the Supreme Court of Illinois has deprived these petitioners of their rights under that Act.

IV.

Furthermore, the effect of the decision of the Supreme Court of Illinois in these cases is, in view of its decisions in *Central Illinois Public Service Co. v. Industrial Commission, supra,* and *Gill v. Lynch, supra,* to discriminate between rights accruing under the Federal Employers' Liability Act and rights accruing under State laws. It plainly appears from those decisions that, if petitioners' causes of action had accrued under the laws of Illinois, petitioners' actions would have been held to have been "commenced" within two years from the day the causes of action accrued.

> "The plaintiff is cast out because he is suing to enforce a federal act. A state may not discriminate against rights arising under federal laws" (McKnett v. St. L. & S. F. R. Co., 292 U. S., l. c. 234).

Conclusion.

Petitioners here recognize the invalidity of the trials had in their cases in the City Courts, in the light of the decisions in *Werner v. Illinois Central R. Co., supra,* and *Mitchell v. Louisville & Nashville R. Co., supra,* and recognize that all proceedings in the said City Courts between the commencement of their suits and the changes of venue to the Circuit Courts, were void.[15] From what we have heretofore said, however, petitioners submit that it clearly appears that their actions were "commenced," within two years from the day their respective causes of action accrued, in courts which had limited jurisdiction over the actions sufficient to empower such courts to change the

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15 Compare Gill v. Lynch, 367 Ill. 203, 207, 10 N. E. 2d 812, 814.

venue of the actions to courts having full jurisdiction thereover; that, under the applicable doctrines and decisions of this Court, as well as of the courts of Illinois, it was not only the right, but the duty, of the courts in which petitioners' actions were instituted to exercise their limited jurisdiction over the actions by changing the venue thereof to the proper courts; that effecting the changes of venue did not constitute a dismissal of the actions in the City Courts and the commencement of new actions in the Circuit Courts; and that petitioners' actions were "commenced" within the time required by Section 6 of the Federal Employers' Liability Act, notwithstanding that the changes of venue in the actions, from the courts having limited jurisdiction over those actions to the courts having full jurisdiction thereover, took place after the time limited by that section for the commencement of the actions.

It follows that the Supreme Court of Illinois was in error in ruling to the contrary, and petitioners, therefore, respectfully submit that the judgments and opinions of the Supreme Court of Illinois here under review should be reversed, and that these causes should be remanded, in order that petitioners may have a trial of their respective actions upon the merits, in the courts having jurisdiction to hear and determine the same.

Respectfully submitted,

ROBERTS P. ELAM,
Counsel for Petitioners.

MARK D. EAGLETON and
JOSEPH B. McGLYNN,
Of Counsel.

APPENDIX

(consisting of a list of cases interpreting the statutes of various states, other than Illinois, relating to transfer to the proper courts of cases commenced in the wrong courts).

Goldie v. Superior Court, 13 Cal. App. 2d 12, 56 P. 2d 261;
Bershon v. Municipal Court, 5 Cal. App. 2d 519, 42 P. 2d 649;
Bartlett v. Lee, 60 N. H. 168;
Tucker v. Lake, 67 N. H. 193, 29 A. 406;
Langdell v. Eastern Basket & Veneer Co., 78 N. H. 243, 99 A. 90;
Commonwealth Roofing Co. v. Riccio, 81 N. J. Eq. 486, 87 A. 114;
Luther v. Silver, 223 N. Y. S. 468, 130 Misc. 21;
Deal v. Zarelli Realty Corp., 265 N. Y. S. 845, 148 Misc. 865;
DeLisa v. Trifoglio Constr. Co., 266 N. Y. S. 798, 149 Misc. 532;
Marcus v. Bader, 282 N. Y. S. 503, 156 Misc. 730;
Lloyds Cas. Co. of N. Y. v. Lem (Tex. Civ. App.), 62 S. W. 2d 497;
In re Jones' Estate, 207 Wis. 354, 241 N. W. 387;
Komorowski v. Jackowski, 164 Wis. 254, 159 N. W. 912.